BORA LASKIN LAW LIBRARY
31761 04863 4224

CONSTITUTIONAL LITIGATION

CASES AND MATERIALS
VOLUME 2

PROFESSOR L. WEINRIB

FALL TERM 2002

FACULTY OF LAW
UNIVERSITY OF TORONTO

Storage
KE
4218.5
.W46
2002
v.2
c.1

CONSTITUTIONAL LITIGATION

CASES AND MATERIALS
VOLUME 2

PROFESSOR L. WEINRIB

FALL TERM 2002

FACULTY OF LAW
UNIVERSITY OF TORONTO

THESE MATERIALS ARE REPRODUCED AS CLASS MATERIAL.
LOUISE JAMES AND BRANDON POTTER ASSISTED IN THE PRODUCTION OF THIS CASEBOOK.

Digitized by the Internet Archive
in 2018 with funding from
University of Toronto

https://archive.org/details/constitutionalli02wein_2

CONSTITUTIONAL LITIGATION
2002-3
TABLE OF CONTENTS: VOLUME I

Page

1. **The Origins of Public Law Litigation**
Carol Harlow and Richard Rawlings, *Pressure Through Law*.....1
Mauro Cappelletti, "The Significance of Judicial Review of Legislation in the Contemporary World".....35

2. **The Rights Revolution in the Post WWII World of Liberal Democracy**
Charles R. Epp, "The Conditions for the Rights Revolution: Theory".....45
C.N.Tate, "Why the Expansion of Judicial Power?".....53
Torbjorn Vallinder, "The Judicialization of Politics – A World-wide Phenomenon: Introduction" 59
C. Neal Tate "Some Introductory Notes".....64
Alec Stone "The Birth and Development of Abstract Review: Constitutional Courts and Policymaking in Western Europe" 68

3. **Why the Courts?**
Joseph Fletcher and Paul Howe, "Public Opinion and Canada's Courts" 75
Kirk Makin, Globe & Mail, April 6, 2002 "Judging the Charter" (4 part series).....97
W.F.Murphy et al, "Courts in Constitutional Democracies.....115
Lon Fuller, ""The Two Basic Principles of Social Ordering".....124
Alexander Bickel, "The Counter-Majoritarian Difficulty".....131
Peter H. Solomon, Jr., "The Policy Process in Canadian Criminal Justice: A Perspective and Research Agenda" (January, 1981) Canadian Journal of Criminology at 25.....140
Dahlia Ltihwick, "Nino's Chain Gang" .....

4. **Process and Procedure**
Abraham Chayes, "The Role of the Judge in Public Law Litigation".....151
Robert Charney, "Civil Procedure in Charter Litigation".....159
Eugene Meehan, "Intervening in the Supreme Court of Canada".....172
- "Constitutional Questions".....182
- "Intervening in the Supreme Court of Canada" 185

Ian Greene, Carl Baar et al, "The Supreme Court of Canada".....189

Rules:
Rule 32 of the Supreme Court of Canada, Notice of Constitutional Question.....206
Form C, under Rule 32(4), Notice of Intervention Respecting a Constitutional Question 207
Rule 18, Supreme Court of Canada, Intervention
- Form B.2 under Rule 18, Application to Intervene 208

Supreme Court Act, R.S.C., c. S-23, s. 53, References 210

VOLUME 2

5. **Standing and Mootness**

a) Standing

D. Gibson & S. Gibson, "Enforcement of the Canadian Charter of Rights and Freedoms (Section 24)" 211

Borowski v. A.G. Canada et al., [1989] 1 S.C.R. 342, 57 D.L.R. (4th) 231.....217

F.L.Morton, *Borowski and Morgentaler: Abortion, the Charter and the Courts* (Toronto: McClelland and Stewart, 1992) 220

Canadian Council of Churches v. The Queen and the Minister of Employment and Immigration, [1992] 1 S.C.R. 236.....228

Canadian Egg Marketing Agency v. Pineview Poultry Products Ltd., 1998 Can. Sup. Ct. LEXIS 49, extract.....235

Vriend v. Alberta [1998] 1 S.C.R. 493, extract 239

b) Mootness

Borowski v. Canada, [1989] 1 S.C.R. 342, extract 242

New Brunswick (Minister of Health and Community Services) v. G.(J.), [1999] 3 S.C.R. 46, extract 248

6. **Intervention & Amicus Curiae**

Kirk Makin, "Intervenors: How Many is Too Many" 252

George Williams, "The Amicus Curiae and Intervener in the High Court of Australia: A Comparative Analysis".....255

Lucy McSweeney, "Oral Submissions on Interventions in the Supreme Court of Canada: A Privilege, not a Right".....265

Gregory Hein, "Interest Group Litigation and Canadian Democracy".....269

F.L. Morton & Rainer Knopff, *The Charter Revolution and the Court Party,* chapters 3 & 4 290

Ian Brodie, *Friends of the Court: the privileging of interest group litigants in Canada* 322

7. **Role of the Attorney General**

Debra M. McAllister, "The Attorney General: Guardian of the Public Interest in Charter Litigation" 352

Transcript of Audio Tapes of Proceeding, Supreme Court of Canada, Miron v. Trudel, undated.....400

P. J. Monahan and M. Finkelstein, "The Charter of Rights and Public Policy in Canada", (1992) 30 Osgoode Hall Law J. 501.....408

E. J. Shilton, "Charter Litigation and the Policy Processes of Government: A Public Interest Perspective", (1992) 30 Osgoode Hall Law Journal 653.....432

F.L. Morton & Rainer Knopff, *The Charter Revolution and the Court Party*, "Government Legal Departments" 117-123 436

Statutes & Rules

Department of Justice Act
Ministry of the Attorney General Act, Ontario 443
Courts of Justice Act, s. 109, Notice of Constitutional Question (Ont.) 445
Rule 4.11, Notice of Constitutional Question 446
Notice of Constitutional Question, Form 4F 447

Eaton v. Brant County Board of Education (1997), 142 D.L.R. 4th 385 448

8. **Remedies**

Robert J. Sharpe and Katherine E. Swinton, *The Charter of Rights and Freedoms* (Toronto: Irwin Law, 1998), chapter 17, "Remedies" 452
David Sgayias, "Charter Remedies: Proceeding Cautiously", Fifth Annual Analysis of the Constitutional Decisions of the Supreme Court of Canada, 2001 461
Eldridge v A.G. B.C. 1997 Can. Sup. Ct. LEXIS 86, extract 479
Vriend v. Alberta [1998] 1 S.C.R. 493 480
R.v. Corbiere 1999 Can. Sup. Ct LEXIS 25 490
Rodriguez v A.G. Canada [1993] 3 S.C.R. 519 494
Manitoba Provincial Judges' Association v Manitoba (Minister of Justice) [1997] 3 S.C.R. 503